IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.2421 OF 2007

1.Vallabhdas Maganlal Dhorda & Anr. ...Appellants

vs.

The Municipal Corporation of
Greater Bombay ...Respondent

Mr.S.Vaishnawa i/b M/s.N.N.Vaishnawa & Co. for the Appellants
Mr.J.J.Xavier for the Respondent-Corporation.

CORAM: A.S.OKA,J.
DATE : DECEMBER 5,2007.

P.C.:

1. Heard Advocates for the parties. The learned Advocate for the Appellants has placed on record an undertakings of the first Appellant which is taken on record and marked 'X' for identification. The learned Advocate for the Appellants states that the said undertaking is given by the first Appellant for himself and on behalf of the second Appellant. Statement is accepted. The Appellant has undertaken to remove hanging box in the suit premises within a period of twenty four weeks. The Appellants are seeking permission to apply for regularization of the offending structures which are the subject matter of the notice dated 10th September 1982 issued by the Respondent-Corporation under section 351 of the Mumbai Municipal Corporation Act,1888. The said notice alleges that the Appellants have made unauthorised extension of shop on otla on ground floor by 1.00 meter and have made the box type over hanging awning of size of 1.8 meters X 3.10 meters and

height of 2.10 meters.

2. The suit filed by the Appellants challenging the action under section 351 of the said Act of 1888 has been dismissed by the trial court. Apart from other aspects the trial court relied upon the statement made by the first Appellant that he had no objection if the Corporation demolishes the extension to his shop and box type over hanging awning to his shop.

3. The Appellants will have to remove the over hanging box after expiry of a period of 24 weeks from today even if the application for regularization is not decided within a period of twenty four weeks. They will have to immediately remove the box if the application is rejected.

4. Hence, I pass the following order :

i) Appeal is dismissed as withdrawn.

ii) Time of twenty four weeks is granted to the Appellant to remove overhanging box subject matter of the notice dated 10th September 1982 issued by the Respondent-Corporation. It is made clear that even if the application for regularization is not decided within a period of 24 weeks from today, the Appellants are bound to remove the over hanging box. If application for regularisations is rejected, the Appellants will have to unconditionally

remove the over hanging box without prejudice to their right to challenge the order of rejection. If the Appellants do no remove the same, the Respondent-Corporation will be entitled to remove the same.

iii) If application for regularization of offending structure mentioned in the notice dated 10th September 1982 is made within a period of eight weeks from today, the concerned Officer of the Respondent-Corporation will decide the same within a period of 24 weeks from today.

iv) The order passed on the said application shall be communicated by the Respondent-Corporation within a period of one week from the date of passing the order to the Architect of the Appellants.

v) For a period of 28 weeks from today, the offending structure except the overhanging box shall not be removed by the Respondent-Corporation.

vi) Parties to act upon an authenticated copy of this order.

vii) No order as to cost.

JUDGE